In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.....

MARY VIELLE LUKIN, MARY LUKIN, Administratrix of the estate of John Vielle, deceased; MARY VIELLE, FRANCIS VIELLE, PETER VIELLE, CECILLE VIELLE TROMBLEY, ISABELLE VIELLE, THERESA JARVIS, MARTHA VIELLE GALLINEAUX,

Petitioners,

vs.

FRANK L. CHATTERTON,

Respondent.

BRIEF IN SUPPORT OF PETITION
JURISDICTION

The jurisdiction of this Court is invoked under section 237 of the judicial code as amended, 28 U.S.C.A. 344. The decision of the Supreme Court of Montana, the highest court of said state, affirming the judgment of the lower state district court, was

entered December 12, 1944 (R. 65-69). Petition for rehearing was denied January 23, 1945 (R. 88). Extension of time to and including May 18, 1945, for filing petition for certiorari was granted by Mr. Justice Wm. O. Douglas on April 20, 1945 (R. 89).

The trial court, the District Court of Glacier County, Montana, by decree, adjudged Frank L. Chatterton to be the owner of a tract of land originally allotted to the Indian father of petitioners under a special agreement between the United States and the Blackfeet Indian Tribe, 25 United States Statutes at large 113, and the Indian Allotment Act of 1887, 25 U.S.C.A. 348. The trial court construed the foregoing statutes and the amendment to the Indian allotment act, 25 U.S.C.A. 349, and in effect held that the allotted land was subject to taxation and sale by the State of Montana. Frank L. Chatterton based his title on a tax levy and sale of the lands by the said state. The decree of the trial court was rendered and entered November 18, 1942 (R. 19-21). The decision of the trial court was specified as error on appeal from the decree to the Montana Supreme Court upon the grounds that the decree was contrary to the law and the evidence, and that the lands involved were immune from taxation by the State of Montana. (See appendix for specifications of error in the State Supreme Court.) The State Supreme Court construed the foregoing United States Statutes and held the land was subject to taxation and sale by the state. The opinion of the State Supreme Court appears in the record on pages 65 to 69, and is reported in 154 Pac. (2d) 798, but not yet reported in the published Mon-

tana Reports.

The jurisdiction of this court in cases of the character here involved has been favorably invoked in cases of this character as will appear from decisions of this court hereafter cited in the argument and by reference to the following decisions involving statutes pertaining to Indians.

Ward v. Love,
253 U.S. 17, 64 L.ed. 751,

Longest v. Langford,
276 U.S. 69.

STATEMENT OF FACTS

The facts are stated in the petition, pages 2 to 11. We emphasize that the facts, in brief, are the State of Montana taxed, and sold for the unpaid taxes, a tract of land allotted to the Blackfeet Indian father of the petitioners at a time when such land was exempt from taxation both by virtue of a special agreement between the United States and the Blackfeet Indian Tribe and under the general Indian allotment act of the United States, and that the claim of ownership of Frank L. Chatterton is based solely on the said tax sale.

SPECIFICATIONS OF ERROR

The Supreme Court of Montana erred as follows:

(a) In holding that by reason of the issuance of the fee patent to John Vielle the land theretofore allotted to him under the trust patent became subject to taxation and sale by the State of Montana for the

reason that said land was not taxable (R. 65-69, and appendix hereto).

(b) In holding that delivery of the fee patent to John Vielle was not necessary to its validity, for the reason that actual delivery of a fee patent to the Indian grantee is expressly required by the Indian Allotment Act of 1887, 25 U.S.C.A. 348 (R. 66 and appendix hereto).

(c) In holding that it could not be shown by the affidavits of John Vielle constituting part of the official records of the Indian Allotment of the United States that he had never made a valid application for the issuance of the fee patent to him (R. 65-67 and appendix hereto).

(d) In holding that John Vielle had made a valid application for the issuance to him of the fee patent (R. 65 and appendix hereto).

(e) In affirming the default decree of the trial court adjudging Frank L. Chatterton the exclusive owner of the land involved (R. 65-69 and appendix hereto).

(f) In refusing to pass upon the question of the sufficiency of the evidence to make a case under section 2214 of the Revised Codes of Montana, and the question of the validity of the order of the trial court requiring the deposit of money by defendants for the use of the plaintiff and for the entry of decree quieting title to the land in plaintiff (Frank L. Chatterton) in the event defendants failed to make such deposit (R. 18, 19, and appendix hereto).

SUMMARY OF THE ARGUMENT

1. The tax levied and sale of the land for the unpaid taxes were wholly void and Frank L. Chatterton acquired no valid title to the land under his quitclaim deed from Glacier County.

2. Valid application for a fee patent was not made by the Indian patentee.

3. The order of the trial court requiring deposit of money by defendants under section 2214 Revised Codes of Montana and entry of default decree against defendants and affirmance of the decree by the Montana Supreme Court deprived the defendants of their property without due process of law.

ARGUMENT

1. The tax levied and sale of the land for the unpaid taxes were wholly void and Frank L. Chatterton acquired no valid title to the land under his quitclaim deed from Glacier County.

In 1886 representatives of the United States made an agreement with the Indians of the Blackfeet Tribe, and other tribes, which provided for the relinquishment by said Indians of their right to occupancy of certain described lands in Montana and their consenting to the reduction of the size of their reservation area, and provided that allotments might be made of lands to individual Indians within the reservation. Article VI, 25 Stat. 113 contained the following provision:

"Upon the approval of said allotments by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that

the United States does and will hold the lands thus allotted for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs, according to the laws of the Territory of Montana, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. And if any conveyance shall be made of said lands, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void."

This agreement was ratified by congressional legislation in 1888, 25 United States Statutes at large 113, Vol. 1 pages 604-608, Indian Affairs Laws and Treaties, second edition, Kappler.

By act of February 8, 1887, 25 U.S.C.A. 348, Congress passed the general Indian allotment law which contained a provision for the issuance to Indian land allottees by the Secretary of the Interior of patents and reciting as follows:

"Which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever. Provided, That the President of the United States may in

any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void."

By act of Congress, known as "Enabling Act," approved February 22, 1889, 25 United States Statutes at large 676, authorization was granted for inhabitants of certain territory of the United States, now in part embraced within the exterior boundaries of the State of Montana (Revised Codes of Montana, pages 59-69) to become states. Paragraph "First" of Section 4 (page 60 Revised Codes Montana) of the act provides, pertinently, as follows:

"That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to *** all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; *** that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from

taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of Congress may prescribe."

It will be observed the "Enabling Act" expressly limits the power of the state of Montana to tax such lands as are "owned and held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such acts of congress may prescribe."

It is shown by the record that the trust patentee, John Vielle, was a member of the Blackfeet Tribe of Indians (had not severed his tribal relations), had at all times resided upon the Blackfeet Indian Reservation, was an Indian allottee of the lands involved under the trust patent (R. 4, 5). It would seem that by these terms of the "Enabling Act" the taxes attempted to be levied in 1921 and the sale of the land for same in 1922 were wholly void.

By agreement of September 26, 1895, between the United States and Blackfeet Indians, the said tribe relinquished rights to certain lands theretofore held by them. This agreement provided, substantially, among other things, that when allotments were made in severalty to the Indians the provisions of the agreement

of 1887 (25 Stat. 113), above mentioned, would be in effect, thereby evincing the intention that the patents issued would be trust patents containing the twenty-five year trust period provision (29 Statutes at large 357, 358, Vol. 1 pages 604-609 Kappler's Indian Affairs, Laws and Treaties, second edition).

The last clause of the "Enabling Act" expressly provides for immunity of Indian lands from taxation where granted under congressional grant containing a provision exempting such lands from taxation. In every grant of land by the United States to an Indian to be held in trust there exists the implied provision for exemption of the land from taxation for the trust period.

> Glacier County v. United States,
> 99 F (2d) 733, (Headnote 3 and paragraph 3 page 734) and cases cited therein.

In Ward v. Love County, 253 U.S. 17, 64 L.ed. 751, at 757, this Court referred to the act of congress enabling Oklahoma to become a state which contained provisions, in part similar to the above mentioned Montana "Enabling Act," exempting from taxation "such property as may be exempt by reason of treaty stipulations existing between the Indians and the United States government, or by Federal laws during the force and effect of such treaties or Federal laws." The Court held that where land granted an Indian by special agreement was exempt for a stated time from taxation, such exemption became a vested right in the Indian and could not be repealed or impaired by an act of congress passed subsequently and which de-

cleared that all lands from which restriction on alienation by the Indians were removed were taxable as such subsequent legislation would destroy vested property rights guaranteed by the Constitution of the United States. Justice VanDevanter in delivering the opinion of the Court (64 L.ed. 758) said:

> "As these claimants had not disposed of their allotments, and twenty-one years had not elapsed since the date of the patents, it is certain that the lands were nontaxable. This was settled in Choate v. Trapp, supra, and the other cases decided with it; and it also was settled in those cases that the exemption was a vested property right arising out of a law of Congress and protected by the Constitution of the United States. This being so, the state and all its agencies and political subdivisions were bound to give effect to the exemption." *** and

> "The right to the exemption was a Federal right, and was specially set up and claimed as such in the petition. Whether the right was denied, or not given due recognition, by the supreme court, is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way."

This Court held the taxes levied in the cited case were invalid.

In Carpenter v. Shaw, 280 U.S. 363, 74 L.ed. 478, this Court on certiorari reversed a judgment of the Oklahoma Supreme Court sustaining the validity of a tax of that state imposed upon royalty in petroleum and gas produced from land allotted to an Indian pursuant to special agreement between the United States and the Indian tribe which land under the

agreement was to remain not taxable for a stated period, and which period had not expired when the tax was levied. The Court in declaring the tax invalid held that the land having been granted under a special agreement with the Indian tribe that the land shall be exempt from taxation such exemption could not be impaired by an act of congress subsequent to the making of the agreement and which latter act declared such land taxable. The Court said (first paragraph second column page 481 of 74 L.ed.):

"While, in general, tax exemptions are not to be presumed and statutes conferring them are to be strictly construed (Heiner v. Colonial Trust Co. 275 U.S. 232, 72 L.ed. 256, 48 Sup. Ct. Rep. 65), the contrary is the rule to be applied to tax exemptions secured to the Indians by agreement between them and the national government. Choate v. Trapp, supra (224 U.S. 675, L.ed. 945, 32 Sup. Ct. Rep. 565). Such provisions are to be liberally construed. Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith. Hence, in the words of Mr. Justice M'Lean, "The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense." Worcester v. Georgia, 6 Pet. 515, 582, 8 L.ed 483, 508. See Kansas Indians, 5 Wall. 737, 760, 18 L.ed. 667, 674. And they must be construed not according to their technical meaning but "in the sense in which they would naturally be understood by the Indians." Jones v. Meehan, 175 U.S. 1, 11, 44 L.ed. 49, 54, 20 Sup. Ct. Rep. 1.

"Whatever was the meaning of the present ex-

emption clause at the time of its adoption must be taken to be its effect now, since it may not be narrowed by any subsequently declared intention of Congress. Choate v. Trapp, 224, U.S. 665, 56 L.ed. 941, 32 Sup. Ct. Rep. 565."

One of the leading cases referred to in the various decisions by this Court and by Circuit Courts of Appeal on questions of Indian rights is Choate v. Trapp, 224 U.S. 665, 56 L.ed. 941. In the cited case the Court was considering the effect of an exemption from taxation of Indian land granted an Indian under special agreement between his tribe and the United States where Congress later passed an act expressly declaring such land was subject to taxation and under which latter act the state of Oklahoma attempted to tax the Indian land. The language of the decision, in view of the similarity between the provisions of the Oklahoma Constitution and those of the Montana "Enabling Act" heretofore quoted at page 31, and the agreements of 1886 with the Blackfeet Tribe, 25 Stat. 113 is pertinent to the questions present in the instant case. We quote from the opinion of the Court commencing with paragraph 2 of the first column on page 944 of 56 L.ed:

"The individual Indian had no title or enforceable right in the tribal property. But as one of those entitled to occupy the land, he did have an equitable interest, which Congress recognized, and which it desired to have satisfied and extinquished. The Curtis act was framed with a view of having every such claim satisfactorily settled. And though it provided for a division of the land in severalty, it offered a patent of nontaxable land only to those who would relinquish their claim in the other property of the Tribe formerly held for their common

use. For the Atoka agreement, after declaring that "all land * allotted should be nontaxable," stipulated further that each enrolled member of the Tribes should receive a patent framed in conformity with the agreement, and that each Choctaw and Chickasaw who accepted such patent should be held thereby to assent to the terms of this agreement, and to relinquish all of his right in the property formerly held in common.

"There was here, then, an offer of nontaxable land. Acceptance by the party to whom the offer was made, with consequent relinquishment of all claim to other lands, furnished a part of the consideration, if, indeed, any was needed, in such a case, to support either the grant or the exemption."

The Court in stating the rule of construction to be observed in dealings between the United States and the Indian (paragraph 6, top of page 946 of 56 L.ed.) said:

"But in the government's dealings with the Indians the rule is exactly the contrary. The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith. This rule of construction has been recognized, without exception, for more than a hundred years, and has been applied in tax cases.

"For example, in Kansas Indians (Blue Jacket v. Johnson County) 5 Wall. 737, 760, 18 L.ed. 667, 674, the question was whether a statute prohibiting levy and sale of Indian lands prevented a sale of state taxes. The rule of strict construction would have compelled a holding that the property was liable. But Justice Davis, in speaking for the court, said that "enlarged rules of construction are

adopted in reference to Indian treaties." He quoted from Chief Justice Marshall, who said that "the language used in treaties with the Indians shall never be construed to their prejudice, if words be made use of which are susceptible of a more extended meaning."

In the comparatively recent case of Jackson County v. United States, 308 U.S. 343, 84 L.ed. 313, this Court followed the rule of Ward v. Love County, and Carpenter v. Shaw, above cited. In the opinion delivered by Mr. Justice Frankfurter, referring to the exemption of the Indian's land from taxation (at top of first column page 317 of 84 L.ed.), it is said:

"Nothing that the state can do will be allowed to destroy the federal right which is to be vindicated. *** The state will not be allowed to invade the immunities of Indians no matter how skillful its legal manipulations."

In the following decisions District Courts and Circuit Courts of Appeal have held, in grants by trust patents of land under special agreement and also under the general allotment act, the provision for holding of the land in trust vests the Indian grantee with a vested property right of immunity from taxation and which continues in existence notwithstanding subsequent legislative attempts of congress to withdraw the exemption.

Glacier County v. United States,
99 F. (2d) 733,

United States v. Glacier County,
17 F. Supp. 411,

Board of Com'rs v. United States,
100 F. (2d) 929,

United States v. Board of Com'rs,
6 F. Supp. 401,

United States v. Benewah County,
290 F. 628.

United States v. Nez Perce County,
95 F. (2d) 232,

United States v. Hammer, 195 F. 790,

United States v. Joyce, 240 F. 610,

United States v. Louis County,
95 F. (2) 236, 238,

Morrow v. United States, 243 F. 854,

Board of Com'rs v. United States,
87 F. (2d) 55,

United States v. Ferry County,
39 F. Supp. 1007.

Many more decisions to the same effect may be found. We cite the foregoing as indicating the general belief of the Courts as to nonliability for taxes under circumstances similar to those of the instant case.

We believe the proper construction of the fee patent issued to John Vielle confirms unto the Indian the exempt character from taxation of the land. Under the trust patent the Indian held the land with the exemption and immunity from taxation as a right belonging to or appurtenant to the land, as long as same was held in trust by the United States. In the fee patent the language expressly grants the land to the Indian and to his heirs with all rights, immunities and appurtenances, of whatsoever nature, thereunto belonging (R. 24, 25). It would seem that the express

language of the fee patent was sufficient to preserve for the Indian and his heirs the immunity and right of exemption from taxation and for this further reason the land should be declared nontaxable.

2. Valid application for a fee patent was not made by the Indian patentee.

The Montana Court's finding that John Vielle had applied for the fee patent (R. 65) may not stand when the facts disclosed by his affidavits are considered with the facts of nondelivery and nonacceptance of the fee patent. It is true that court held neither the affidavits nor the fact of nondelivery and nonacceptance of the fee patent may be considered. This view is contrary to the express requirement of the general allotment act of 1887, 25 U.S.C.A. 348, which states: "The patents aforesaid shall be recorded in the General Land Office and afterwards delivered free of charge to the allottee." The rule relative to patents for public land should not be applicable to Indians as the government is dealing with persons under disabilities (wards of the government dependent upon its protection and good faith), Carpenter v. Shaw, 280 U.S. 363, 74 L.ed. 478. The importance of this statutory requirement for delivery of the patent is immediately apparent since its observance will enable the Indian to learn if he has been misled into applying for a patent when it may have been represented to him he was signing an instrument of a totally different character. He may then protect his rights by refusal to accept same and have the patent revoked. In the instant case the Indian's attempt to

protect himself was denied by the very department of the government established for his protection.

This Court has held that in a quiet title action a party to the action could attack a patent issued where the Interior Department had no right to issue same and also that a void patent issued in violation of a statute could be attacked collaterally; Borax Consolidated, Ltd. v. City of Los Angeles, 296 U.S. 10, 80 L.ed. 9; Wright v. Roseberry, 121 U.S. 488, 30 L.ed. 1039.

As to the validity of the application for fee patent the affidavits of the Indian patentee disclose: (a) He could sign his name but otherwise neither read nor write, (b) he never knowingly applied for a fee patent, (c) has never sold or mortgaged or otherwise disposed of the land, (d) he signed the application believing he was signing an oil partnership agreement, (e) when he learned a fee patent had issued he refused to accept same and he never wanted a fee patent, (f) he immediately requested the Indian department to cancel same (R. 40, 48, 49). The patent was never delivered to the Indian and remains in the custody of the Indian Department (R. 38-39). Apparently the application for patent was never sworn to by the Indian (R. 42-43) although the letter of the Indian Commissioner (R. 46) states it was sworn to before one Horace G. Wilson, July 1, 1920.

These facts clearly indicate that the patent was a "forced patent," i.e. not one issued upon a voluntary request knowingly made by the Indian.

Glacier County v. United States,
99 F (2d) 733.

The conduct of the Indian at all times after learning of the issuance of the patent showing his resistance to its issue and repeated endeavors to obtain its cancellation is consistent with the statements contained in his affidavits and indicates the truth of such statements.

We respectfully submit the application of the Indian is void as he never knowingly executed the same.

The foregoing discussion applies to specifications of error (a) to (e) inclusive (ante pp. 27, 28) and to questions presented in the petition numbered 1 to 3 inclusive (ante pp. 15-18).

3. The order of the trial court requiring deposit of money by defendants under section 2214 Revised Codes of Montana and entry of default decree against defendants and affirmance of the decree by the Montana Supreme Court deprived the defendants of their property without due process of law.

The defendants' answer and cross-complaint (R. 3-10), their answer to the order to show cause (R. 12, 14-18) and their motion to quash the order to show cause (R. 13, 14), filed in the trial court, attacked the alleged tax title of the plaintiff in the action as being wholly void as such title was based upon a tax sale for taxes which were null and void. The order for money deposit (R. 18, 19) made the deposit of the sum ordered a condition precedent to defendants' right to a trial of the issues raised by their answer and cross-complaint and had same been complied with and thereafter it was decided the tax was void and that defendants were the owners of the land this money would have been paid over to plaintiff under

section 2214 Revised Codes of Montana. Thus the defendants would have been compelled to pay money on a void tax and would constitute confiscation of their property. When the defendants did not make the deposit as ordered a default decree was entered against them which denied them the right to submit proof of the invalidity of the tax and their ownership of the land. Briefly stated defendants were denied their "day in court."

Amendment 14 article 1 of the Constitution of the United States expressly provides, among other things, as follows:

> "Nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The right of a litigant to be heard on the merits is guaranteed by the foregoing provision.

Windsor v. McVeigh,
93 U.S. 274, 23 L.ed. 914,

Mitchell v. Banking Corp.,
94 Mont. 183, 22 Pac. (2d) 155.

CONCLUSION

The final determination by this Court of the questions of law involved in this case is of the utmost importance to rights of the many Indian allottees of land, that, unless the errors in the decision of the Montana Supreme Court be corrected, regrettable confusion regarding questions of law affecting Indian allotted lands of considerable value will ensue with attendant multiplicity of suits and the expenditure of

substantial sums of money occasioned by such suits.

We respectfully submit that the questions suggested by the petition should be definitely settled by this Court.

Respectfully submitted,

E. J. McCABE,
Great Falls, Montana,
Attorney for Petitioners.

S. J. RIGNEY,
Cut Bank, Montana,
Of Counsel.

APPENDIX

The following is a true copy of the specifications of error contained in the brief of petitioners filed in this case in the Supreme Court of Montana, as appellants in that court:

"1. The Appellants submit that the District Court erred in making its Order of October 6, 1942, filed and entered October 13, 1942 (R. 23 to 25), requiring the Appellants, defendants below, to "deposit in this Court to the use of the Plaintiff and to abide the result of this action, the sum of $1,270.51, representing the sum paid by the plaintiff to Glacier County, Montana, the amount of taxes paid by plaintiff upon said lands and the amount reasonably expended by plaintiff in preserving and making improvements upon said property as aforesaid, and should the defendants fail to make such deposit within the time aforesaid, decree quieting title to said lands in plaintiff shall be entered herein."

a. The Appellants made a motion to quash the Order to Show Cause (R. 16-18). This was overruled by the Court and that order was erroneous as viewed by the Appellants for the reasons stated in the motion.

2. That the Court erred in refusing to permit the Appellants to appear and submit evidence in support of the answer to the Complaint for the reason that the Answer had been filed and served before the Respondent demanded the Appellants to pay in the tax and improvement moneys. The Answer in and of itself set up that the taxes had been illegal and null

and void and that the tax deed was null and void because no taxes were lawfully levied and assessed against the said lands. (R. 4-12.) If the land was not legally assessed and taxes legally levied then there was no tax legally due and the Appellants could not be required to deposit the same. The improvements in themselves were and are subject to the legality of the tax assessment and levy.

3. That the judgment of the Court is contrary to the law and the evidence."

Due service and receipt of a copy of the within
hereby submitted this.....day of May, 19

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Counsel for Respondent